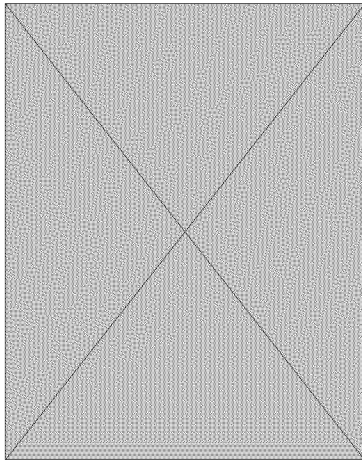


To: Curtin, Paula[Curtin.Paula@epa.gov]
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Sent: Fri 1/24/2014 8:04:36 AM
Subject: WV Governor's Water Protection Bill is Inadequate

WV Governor's Water Protection Bill is Inadequate

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Posted: 23 Jan 2014 04:13 AM PST



Evan Hansen speaks

Officials balk at bill from Governor . . . Say that it is too limited . . .

From an Article by David Beard, Morgantown Dominion Post, January 22, 2014

CHARLESTON — Key legislators are disappointed with the Governor's water protection bill. They said it's too limited in scope.

Meanwhile, the president of Morgantown-based consulting firm Downstream Strategies told legislators Tuesday that the government dropped the ball in preventing this spill — when it had the information at its fingertips — and their bills and the Governor's bill all fall short. He recommended a third way.

Downstream Strategies President Evan Hansen, speaking at a House Judiciary Committee hearing, said it's been known since 2002 that Freedom Industries Inc. posed a threat to West Virginia American Water's supply. That information is in federally mandated Source Water Assessment Reports, prepared for the state Bureau of Public Health and posted online.

The bureau has 342 such reports, Hansen said. They map "zones of critical concern" along waterways that supply public water, and list potential contaminant sources in those zones. Charleston has 51 such sources, including Freedom. Morgantown has 55; Huntington has 424. It appears no protection plan was in place for the zone.

In addition, the State had several means to inspect the Freedom site and prevent this spill, such as the Clean Water Act National Pollution Discharge Elimination System (NPDES) permit, which deals with spills and enables the state to

inspect and enforce stormwater permits. Freedom had a general NPDES permit and did not follow protocol in notifying the state spill-response hotline about the spill.

The state also had available, through the federal Emergency Planning and Community Right to Know Act, Freedom's Tier Two report forms from 2007 and on listing MCHM and 16 other chemicals on site. It described MCHM as an "immediate (acute) physical and health hazard."

TWO RIVAL BILLS — "Here's the debate," said Sen. John Unger, D-Berkeley, "Should we protect everyone's water no matter where they live in West Virginia and who they are? Or should we cherry pick and not protect others?" He co-chairs the Joint Legislative Oversight Commission on State Water Resources and drafted SB 373, a rival to the governor's bill.

SB 373 takes into account all above-ground storage tanks in the state (not already covered by other laws), requiring registration, permitting and inspections, no matter what they contain. Gov. Earl Ray Tomblin's 38-page bill — SB 417 and HB 4258 — limits its regulation to "an industrial aboveground storage tank within a zone of critical concern that contains a volume of regulated material." The material must have an MSDS (material safety data sheet) health hazard level of 2, 3 or 4 (moderate, serious, severe). Levels 0 or 1 (minimal or slight) are exempted.

Senator Unger pointed out the bills' philosophical differences. SB 373 begins, "It is the public policy ... to protect and conserve the water resources for the state and to provide for the public welfare. The state's water resources are ... essential to maintain, preserve and promote quality of life and economic vitality of the state."

The Governor's bill begins, "Industrial businesses are vital to our economy, create good paying jobs with benefits for our citizens, and ensure that commerce will continue to flourish in West Virginia."

Inland tanks could pose a threat to aquifers and well water supplies, Unger said. "You will know what's near your house in regards to any type of chemical facility that could potentially leak into your groundwater. ... Those are fundamental differences that will have to be debated. There's no combining the two."

Commission co-chair Delegate Mike Manypenny, D-Taylor, will introduce a sister to SB 373 today: HB 4255. "I think that all tanks need to be inspected," he said. Municipal water tanks require five-year inspections while above-ground chemical tank inspections are at the discretion of the owner. More than 300,000 people in West Virginia rely on well water, Manypenny said.

A THIRD WAY — Mr. Hansen said none of the bills do enough. Existing law is sufficient to prevent another Freedom spill. He said the DEP should inspect all NPDES-permitted sites, and require site-specific permits, with public review, for facilities such as Freedom's. The Legislature should provide sufficient money for the DEP to do this.

Under the federal Safe Drinking Water Act, he said, the state should update all Source Water Assessment Reports, mandate protection plans and state-specific protective standards for chemicals, and require and assist local emergency planning committees to review the reports and take action as needed. .

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